

BEFORE THE GROWTH MANAGEMENT HEARINGS BOARD  
CENTRAL PUGET SOUND REGION  
STATE OF WASHINGTON

FRIENDS OF PIERCE COUNTY, et al., CITY  
OF BONNEY LAKE, and MARILYN  
SANDERS, et al.,

Petitioners,

v.

PIERCE COUNTY,

Respondent

and

ORTON FARMS, et al., CITY OF SUMNER,  
BETHEL SCHOOL DISTRICT, PUYALLUP  
SCHOOL DISTRICT, and FORTERRA NW,

Intervenors,

and

WASHINGTON SUSTAINABLE FOOD AND  
FARMING NETWORK, et al.,

Amicus

**CASE NO. 12-3-0002c**

*(Friends of Pierce County)*

**CERTIFICATE OF APPEALABILITY**  
**Thurston County Superior Court**  
**No. 12-2-01649-3,**  
**No. 12-2-01650-7,**  
**No. 12-2-01804-6,**  
**No. 12-2-01830-5.**

THIS Matter comes before the Board upon applications for a certificate of appealability for direct review by the Washington State Court of Appeals, Division II, in *City of Sumner v. Growth Management Hearings Board*, Thurston County Superior Court Case Nos. 12-2-01650-7 and 12-2-01830-5 and in *Orton Farms, LLC and Investco Financial Corporation v. Growth Management Hearings Board*, Thurston County Superior Court Case Nos. 12-2-01649-3 and 12-2-01804-6.

1 I. PROCEDURAL BACKGROUND

2 On October 25, 2011, the Pierce County Council adopted Ordinance No. 2011-60s2,  
3 amending the Pierce County Comprehensive Plan by adopting the County's 2011  
4 comprehensive plan amendments. The Friends of Pierce County, Tahoma Audubon  
5 Society, American Farmland Trust, PCC Farmland Trust, and Futurewise (collectively,  
6 "Friends") filed a timely petition for review challenging Amendments U-3a, U-3b, and C-5  
7 (the Orton Junction amendments) adopted by Ordinance No. 2011-60s2. The City of  
8 Sumner ("Sumner") and Orton Farms LLC and Investco Financial Corporation ("Orton")  
9 intervened in support of Pierce County.  
10

11  
12 On July 9, 2012 the Board issued its Final Decision and Order ("FDO") in *Friends of Pierce*  
13 *County, et al. v. Pierce County*, GMHB Case No. 12-3-0002c. The FDO concluded the  
14 County's adoption of Amendments U-3a and C-5 failed to comply with the Growth  
15 Management Act, chapter 36.70A RCW ("GMA"). The Board remanded the matter to the  
16 County to take action to achieve compliance with the GMA as set forth in the FDO.  
17

18 Sumner filed appeals of the Board's rulings concerning the Orton Junction amendments in  
19 Thurston County Superior Court Case Nos. 12-2-01650-7 (August 8, 2012) and 12-2-01830-  
20 5 (September 4, 2012). Orton filed appeals of the Board's rulings concerning the Orton  
21 Junction amendments in Thurston County Superior Court Case Nos. 12-2-01649-3 (August  
22 8, 2012) and 12-2-01804-6 (August 30, 2012).  
23

24  
25 On September 5, 2012, Friends and Pierce County ("County") (both respondents before the  
26 superior court) filed companion applications for direct review in Thurston County Superior  
27 Court Case Nos. 12-2-01650-7, 12-2-01830-5, 12-2-01649-3, and 12-2-01804-6. On  
28 September 10, 2012, Orton and Sumner filed companion applications for direct review in the  
29 same four cases but making different arguments.  
30  
31  
32



1 The Board finds the public interest is not harmed by delay, inasmuch as the Board's ruling  
2 preserves the designation of prime farmlands as Agricultural Resource Lands. The Board is  
3 keenly sensitive to the importance of finality and certainty in land use decisions and  
4 recognizes that prompt resolution reduces delay and expense. However, the Board finds no  
5 unique public interest in deciding this particular matter on an expedited basis.  
6

7  
8 **Conclusion:** For the reasons stated above, the Board finds delay in this matter would be  
9 detrimental to the interests of several parties - Friends, Orton, and Sumner – but not to the  
10 interests of the public.  
11

## 12 **B. Fundamental and Urgent Statewide or Regional Issues Raised**

13 The underlying issue in the Orton Junction decision is whether the County's de-designation  
14 of agricultural resource lands and expansion of the Urban Growth Area to include those  
15 lands complies with the GMA by being consistent with criteria in the Pierce County  
16 Comprehensive Plan, Countywide Planning Policies, multi-county planning policies, and the  
17 Department of Commerce minimum guidelines. The courts of appeals and the Supreme  
18 Court have provided a number of decisions on de-designation of agricultural resource lands  
19 and expansion of urban growth areas.<sup>2</sup>  
20

21  
22 Orton and Sumner assert this case presents fundamental and urgent questions concerning  
23 de-designation of agricultural lands, expansion of urban growth areas, and an innovative  
24 approach to protection of agricultural resources. As to agricultural lands de-designation and  
25 urban expansion, the Board's analysis is framed by the requirements of the GMA and prior  
26 court rulings and is specific to the facts of the case and the provisions of the County's plans  
27

28  
29 <sup>2</sup> Cases cited in the FDO include *Lewis County v. Western Washington Growth Management Hearings Board*,  
30 157 Wn.2d 488, 139 P.3d 1096 (2006); *Thurston County v. Western Washington Growth Management*  
31 *Hearings Board*, 164 Wn.2d 329, 190 P.3d 38 (2008); *City of Arlington v. Central Puget Sound Growth*  
32 *Management Hearings Board*, 164 Wn.2d 768, 193 P.3d 1077 (2008); *City of Redmond v. Central Puget*  
*Sound Growth Management Hearings Board*, 136 Wn.2d 38, 959 P.2d 1091 (1998); *Clark County v. Western*  
*Washington Growth Management Hearings Board*, 161 Wn.App. 204, 254 P.3d 862 (2011), rev' granted 172  
Wn.2d 1006 (2011); *Futurewise v. Central Puget Sound Growth Management Hearings Board*, 141 Wn.App.  
202 (2007).

1 and Commerce's guidelines; the Board sees no fundamental or urgent statewide or regional  
2 question to be resolved.

3  
4 As to the use of an "innovative approach," the Board's decision assessed whether the  
5 proposed "Seven Principles Agreement," while facilitating some agricultural de-designation,  
6 preserved the agricultural industry as required by the applicable provisions of the GMA and  
7 Commerce guidelines. The Supreme Court has twice ruled that an "innovative approach" to  
8 agricultural preservation "may not then undermine the Act's agricultural conservation  
9 mandate" by allowing conversion to unrelated or incompatible uses.<sup>3</sup> The Board's decision  
10 in this case commended the innovative approach, but found the Seven Principles  
11 Agreement as written fell short of compliance. The Board sees no fundamental or urgent  
12 statewide or regional question to be resolved.  
13

14  
15 The Friends and County assert this case presents a fundamental and urgent regional  
16 question of whether Central Puget Sound counties and cities must follow the multicounty  
17 planning policies adopted pursuant to RCW 36.70A.210(7) -- a question which has never  
18 been directly addressed by an appellate court. They point out that by June 30, 2015 Pierce,  
19 King, and Snohomish counties and cities will have to review and revise their comprehensive  
20 plans as required by RCW 36.70A.130. They suggest without an appellate court resolution,  
21 cities and counties in the region "cannot effectively take the Multicounty Planning Policies  
22 into account in the updates."  
23

24  
25 The Board notes the multicounty planning policies (MPPs) adopted for the Central Puget  
26 Sound region pursuant to RCW 36.70A.210 (7) are not a new feature of the GMA. Many  
27 county and city plans include specific provisions requiring consistency with the MPPs –  
28 currently VISION 2040 and previously VISION 2020 – as does Pierce County. Consistency  
29 with MPPs is routinely raised and decided in GMHB cases in the Central Puget Sound  
30

31  
32 <sup>3</sup> *Lewis County v. Western Washington Growth Management Hearings Board*, 157 Wn.2d 488, 508-509, 139  
P.3d 1096 (2005), citing *King County v. Central Puget Sound Growth Management Hearings Board* ("Soccer  
Fields"), 142 Wn.2d 543, 561, 14 P.3d 133 (2000).

1 region. The Board has never found non-compliance on the basis of MPP provisions  
2 standing alone,<sup>4</sup> and does not in this case.

3  
4 However, to the extent the appellants here are challenging the application of MPPs, the  
5 Board finds a fundamental regional issue is raised:

6 *whether multi-county planning policies may be applied as framework*  
7 *principles in determining compliance with the GMA.*

8 **Conclusion:** For the reason stated above, the Board finds this matter involves an issue of  
9 fundamental regional importance.  
10

### 11 **C. Significant Precedential Value**

12 RCW 34.05.518 (3)(b) requires the Board to find that the matter *either* presents a  
13 fundamental regional issue *or* is likely to have significant precedential value. Having found  
14 that one of the issues presented is of fundamental regional importance, the Board need not  
15 address the precedential value of this matter. However, pursuant to RCW 34.05.518 (4),  
16 the Board responds to the assertions of the applicants.  
17

18  
19 Orton and Sumner point out, and the Board acknowledges, that appellate rulings on GMA  
20 questions provide precedential guidance to other local governments. However, as noted  
21 above, the courts have previously provided guidance concerning agricultural resource land  
22 preservation, urban growth area expansion, and innovative techniques for farmland  
23 protection.  
24

25  
26 The Friends and County contend resolution by the appellate courts of the question of the  
27 effect of the Multicounty Planning Policies is likely to have significant precedential value as it  
28 affects county and city decisions on 2015 comprehensive plan and development regulation  
29 updates. The Board concurs.  
30

31 <sup>4</sup> See, e.g., *City of Shoreline, et al. v. Snohomish County*, CPSGMHB Coordinated Case Nos. 09-3-0013c/10-  
32 3-0011c, Final Decision and Order (May 11, 2011), at 18: "The Board's conclusion is *further buttressed* by the  
language of Comprehensive Plan Objective LU 3.A which establishes the intention that Urban Center planning  
must be consistent not only with the Comprehensive Plan policies, but also with Vision 2040." Emphasis  
added.

1 **Conclusion:** For the reason stated above, the Board finds judicial determination of this  
2 matter is likely to have significant precedential value.  
3

4  
5 **III. ORDER**

6 Having reviewed the applications for Certificate of Appealability, the relevant provisions of  
7 the Administrative Procedures Act, in particular RCW 34.05.518(3)(b), and the facts of this  
8 matter, the Board finds that delay in obtaining a final and prompt determination of the issues  
9 will be detrimental to several parties. The Board further finds that a fundamental issue of  
10 regional importance is raised and that a judicial determination is likely to have significant  
11 precedential value.  
12

13 Having found that the criteria of RCW 34.05.518(3) are satisfied, **the Board issues a**  
14 **Certificate of Appealability** for direct review in Thurston County Superior Court Case Nos.  
15 12-2-01650-7, 12-2-01830-5, 12-2-01649-3, and 12-2-01804-6.  
16

17 DATED this 28<sup>th</sup> day of September, 2012.  
18  
19

20 \_\_\_\_\_  
21 Margaret A. Pageler, Presiding Officer  
22

23 \_\_\_\_\_  
24 William P. Roehl, Board Member  
25

26 \_\_\_\_\_  
27 Raymond L. Paoella, Board Member  
28  
29  
30  
31  
32